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SUPREME COURT OF THE UNITED STATES.

No. 138.

JOHN GALBRAITH, PLAINTIFF IN ERROR,

vs.

PETER FISHER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

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GIDEON, Print.

Copy of Docket Entry in the Court of Common Pleas of Erie.

JOHN GALBRAITH vs. PETER FISHER. } No. 6.—May T., 1850.

Feb. 12, 1850, summons in ejectment for an acre of land in Millcreek township. "Served this writ on defendant Peter Fisher, personally and by copy, Feb. 18, 1850." So ans. Sh'ff. And now, to wit, June 2, 1851, the defendant pleads "not guilty." On trial list, 4th Monday of April, 1852. May 11, 1852, stated case filed. Same day entry made by the court as follows: "Being interested in the question presented in this case, I have declined hearing the argument and deciding the same. Whereupon it is agreed by the counsel that judgment be entered pro forma for the defendant, with leave to the plaintiff to take a writ of error. Same day, per curiam. Judgment for the defendant on the case stated. Aug. 23, 1852, writ of error filed.

J. C. KNOX, *P. J.*

ERIE COUNTY, *ss.*

I, Samuel Perley, proth'y of the court of common pleas of said county, do hereby certify, that the foregoing is a full and correct copy of the docket entry in the foregoing case, and hereto are attached all papers and documents on file in said court, touching said case.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Erie, this 22d day of September, A. D. 1852.

SAMUEL PERLEY, *Pro.*

{ Seal of the Court of Common Pleas of Erie County. }

Summons in Ejectment.

(Copy.)

ERIE COUNTY, *ss.*

The Commonwealth of Pennsylvania to the Sheriff of said county, greeting:

You are hereby commanded, that you summons Peter Fisher to appear before the judges of the court of common pleas in and for said county, to be holden at Erie, on the first Monday in May next, then and there to answer to a certain complaint made by John Galbraith, that the said Peter Fisher now hath in his actual possession a piece of land in Eagle village, Millcreek township, Erie

county, bounded south by land of John Zuck; on the west by the Erie and Waterford turnpike; on the north by land now or formerly owned by Enos; on the east by State street; being about one acre of land, having a two-story frame house and barn erected thereon, and known as the "Western Prospect," the right of possession or title to which he, the said John Galbraith, saith is in him and not in the said Peter Fisher; all which he, the said John Galbraith, averreth he is prepared to prove before our said court. Hereof fail not. Witness the Hon. G. Church, president of our said court, at Erie, this 12th day of February, A. D. 1850.

JAMES SKINNER, *Pro.*
By ROBINSON.

Endorsement on Writ.

ERIE COUNTY, *ss.*

Personally appeared before me P. E. Burton, sheriff, who, after being duly sworn according to law, saith he served this writ on defendant Peter Fisher, personally and by copy, February 18, 1850.

P. E. BUTON, *Sh'ff.*

Sworn and subscribed before me this 7th day of May, 1850, in open court.

JAMES SKINNER, *Pro.*

Case stated.

JOHN GALBRAITH
vs.
PETER FISHER.

Erie County Common Pleas, No. 6 of May term, 1850.—Ejectment.

The parties agree upon the following statement of facts in this cause, to be considered in the nature of a special verdict, for the opinion and judgment of the court thereon, and subject to writs of error by either party, as in other cases.

Both parties claim title to the land and premises in dispute, from Simeon Dunn, who was the owner thereof on the 5th day of June, A. D. 1839, and so continued until divested of his ownership by the proceedings hereinafter mentioned.

On the 24th day of June, 1843, the said Simeon Dunn was duly declared and decreed a bankrupt, and, upon due proceedings had, discharged, in pursuance of the act of Congress entitled "An act for establishing a uniform system of bankruptcy throughout the United States," passed the 19th day of August, A. D. 1841, in the district court of the United States, western district of Pennsylvania, and James H. Armstrong appointed his assignee; all whereof was on the same day duly certified by said court to said bankrupt and said assignee.

That on the first day of November, 1844, the said James H.

Armstrong, as assignee aforesaid, in pursuance of, and by force *and by force* and virtue of, the power and authority vested in him by law for such purpose, duly and regularly sold, and by deed of that date conveyed, the said land and premises, under and according to the several provisions of the law and said act of Congress, unto Carson Graham, his heirs and assigns.

On the 30th day of August, 1848, the plaintiff in this cause obtained a judgment in this court against said Carson Graham, for the sum of six thousand dollars; and, after due proceedings were had therein for that purpose, the said land and premises were, by virtue of venditioni exponas to August term, 1850, No. 54, directed to the sheriff of said county, sold to said plaintiff, and a deed thereof by said sheriff, dated the 7th day of February, 1850, was, upon the 8th day of February, 1850, duly acknowledged and delivered unto said plaintiff, as will fully appear by reference to the record and sheriff's deed, which are made a part of this case.

On the 5th day of June, 1839, Charles M. Reed obtained a judgment in this court against said Simeon Dunn for the sum of five hundred and twenty-three dollars and twenty-six cents, entered to May term, 1839, No. 277—to May term, 1842, No. 45—a scire facias was issued upon said judgment, and a judgment thereupon entered for six hundred and thirteen dollars and forty-eight cents, on the 10th day of May, 1842. Upon this judgment a writ of fi. fa. to May term, 1843, No. 76, was issued, and a levy, by virtue thereof, was made on the land and premises in dispute, on the 15th day of April, 1843, and after the application in bankruptcy, an inquisition held and condemnation had, with an appraisement, according to the then existing law, at the sum of $2,500; and subsequently thereto, sundry writs of venditioni exponas were issued thereon; and by virtue of the third pluries writ to February term, 1845, No. 122, the sheriff of said county sold the same land and premises to said Charles M. Reed, on the first day of February, 1845, for the sum of $560, and a deed thereafter, in pursuance thereof, was by said sheriff duly acknowledged and delivered to said Reed; all whereof will fully appear by reference to the record of the said judgment, proceedings thereon, and sheriff's deed aforesaid, and which are all made a part of this stated case.

That of the time of said decree in bankruptcy, and appointment of said assignee, the said Charles M. Reed had due notice, as also of said decree, appointment, and proceedings; and his said debt and judgment against said Dunn was provable therein, according to the several provisions of the said recited act of Congress of 1841, as first aforesaid.

Now if, upon the foregoing state of facts, the court are of opinion that the title and right to possession of the premises in suit is in the plaintiff, then judgment to be entered for plaintiff generally,

with costs of suit; but if the court is not of that opinion, then judgment to be entered for defendant for costs.

MARSHALL & VINCENT,
Def'ts Atty's.
G. CHURCH, and
THOMPSON & GRANT,
Att'ys for Pl'ff.

Endorsed: Filed May 11, 1852.

WESTERN DISTRICT OF PENNSYLVANIA, *sct.*

The Commonwealth of Pennsylvania, to the Judges of the Court of Common Pleas, for the county of Erie, greeting:

Because in the record and process, and in rendering the judgment in a certain plaint which was in our said court, before the judges of the same court by our writ, between John Galbraith and Peter Fisher, as it is said, manifest error hath intervened, to the great damage of the said John Galbraith, as by complaint of the same John Galbraith we have received information, we, willing that if any error be therein it should be corrected, and that speedy justice be done to the parties in this part, do command you, that if judgment, as it is said, be rendered in the said plea, then the record and process, and all things touching the same, under your seal, distinctly and openly, you have before the judges of the supreme court of the said Commonwealth, at a supreme court to be held at Pittsburg, in and for the western district of the said Commonwealth, on the 4th Monday of September next, and this writ, that the record and process aforesaid being inspected, we may further cause to be done what of right and according to our customs ought.

Witness the Honorable John B. Gibson, L. L. D., chief justice of our said supreme court, at Pittsburg, the 25th day of October, in the year of our Lord one thousand eight hundred and fifty-one, and of the Commonwealth the 75th.

{ Seal of the Supreme Court. }

Allowed by—

JOHN COYLE,
Prothonotary of Western District.

No. 6, May term, 1850. No. 18, Sept. and Oct. term, 1852.

John Galbraith, pl'ff in error, vs. Peter Fisher, defendant in error.

Writ of error to the court of common pleas of Erie county. Affidavit filed and writ issued, Aug. 16, 1852. "Rule to appear and plead at return of writ."

N. B. Ten days' notice to the part or counsel below will be necessary to compel an appearance.

JOHN COYLE,
Pro. W. D.

COMMONWEALTH OF PENNSYLVANIA,
County of Erie, ss.

To the Honorable the Judges of the Supreme Court:

The record and process within mentioned, with all things touching the same, before the judges within named, at the day and place within contained, in a certain record to this writ annexed, we do certify and send, as within we are commanded. September 22, 1852.

JAMES MILES, [SEAL.]
Associate Judge.
JOS. M. STERRETT, [SEAL.]
A. J.
Associate Judges of the Court of Common Pleas, of Erie County.

In the Supreme Court of Pennsylvania, western district, No. 18.—September and October Term, 1852.

Precipe for Writ of Error.

JOHN GALBRAITH, Plaintiff in Error, and below,
vs.
PETER FISHER.

June writ of error to the court of common pleas of Erie county.

G. CHURCH,
Att'y for Pl'ff in Error.

To the Proth'y of the Supreme Court.

Endorsed: "Filed and writ issued Aug. 16, 1852."

Affidavit.

John Galbraith, the plaintiff in error, being duly affirmed, saith that the writ of error in this case is not intended for delay.

JOHN GALBRAITH.

Affirmed and subscribed before me Aug. 9, 1852.

SAMUEL PERLEY, *Pro.*

Endorsed: "Filed Aug. 16, 1852."

In the Supreme Court of Pennsylvania, western district, No. 18.—September and October Term, 1852.

JOHN GALBRAITH, Plaintiff in Error, and below,
vs.
PETER FISHER.
} Error to the Court of Common Pleas of Erie county.

The pl'ff in error files the following assignment of error:

1. The court erred in entering judgment in favor of the defendant in error on the case stated.

THOMPSON & CHURCH,
Att'ys for the Pl'ff in Error.

Endorsed: "Filed October 1, 1852."

In the Supreme Court of Pennsylvania, western district, No. 18 of September and October T., 1852.

[Church] JOHN GALBRAITH, Plaintiff in Error, and below, vs. [Marshall] PETER FISHER. } Error to the Court of Common Pleas of Erie county.

Docket Entry.

August 16, 1852, precipe and affidavit filed and writ of error issued. September 28, 1852, record returned. October 1, 1852, errors assigned. Oct. 2, 1852, continued by consent. Sept. 26, 1853, argued. And now, to wit, January 3, 1854, judgment affirmed.

Opinion by Lewis, J.

Writ of error from U. S. Supreme Court, filed Feb. 18, 1858.

I, Alfred B. McCalmont, prothonotary of the supreme court of Pennsylvania for the western district, do hereby certify that the foregoing is a true and complete copy and exemplification of the proceedings and judgment in the above entitled case, including the proceedings and judgment of the court of common pleas of Erie county, as removed to the said supreme court by writ of error, and now remaining there in so full and entire as the same remain of record.

Witnesss my hand and the seal of the court at Pittsburg, this [L. S.] nineteenth day of February, in the year of our Lord one thousand eight hundred and fifty-eight.

ALFRED B. McCALMONT,
Proth'y West. Dist.

Citation.

The United States of America to Peter Fisher, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Pennsylvania, wherein John Galbraith is plaintiff in error, and you are defendant in error, to show cause, if any there be, why judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Ellis Lewis, chief justice of the supreme court of the State of Pennsylvania, this twenty-third day of October, in the year of our Lord one thousand eight hundred and fifty-seven.

ELLIS LEWIS,
Ch. Justice Sup. Court of Penn'a.

On this seventeenth day of November, in the year of our Lord one thousand eight hundred and fifty-seven, personally appeared H. C. Rogers, before me, the subscriber, a justice of the peace in and for the county of Erie, of the State of Penn'a, and makes oath that he delivered a true copy of the within citation to Peter Fisher, the within named defendant, on this seventeenth day of November, A. D. 1857.

H. C. ROGERS.

Sworn and subscribed before me day and year aforesaid.
J. F. DOWNING, *J. P.*

Fees $1 00. R.

(Copy.)

Know all men by these presents, that we are held and firmly bound unto Peter Fisher in the full and just sum of one thousand dollars, to be paid to the said Peter Fisher, certain attorney, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this twenty-first day of October, in the year of our Lord one thousand eight hundred and fifty-seven.

Whereas lately at a supreme court of the State of Pennsylvania, in a suit depending in said court, between John Galbraith, plaintiff, and Peter Fisher, defendant, judgment was rendered against the said John Galbraith, and the said John Galbraith having obtained a writ of error and filed a copy thereof in the clerk's office of the said court, to reverse the judgment in the aforesaid suit, and a citation directed to the said Peter Fisher, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now the condition of the above obligation is such, that if the said John Galbraith shall prosecute his writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

JOHN GALBRAITH, [SEAL.]
GEO. B. CUTLER. [SEAL.]

Sealed and delivered in presence of—

Approved by ELLIS LEWIS.

[L. S.] UNITED STATES OF AMERICA, *ss*.

The President of the United States to the honorable the Judges of the Supreme Court of the State of Pennsylvania, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between John Galbraith, plaintiff, and Peter Fisher, defendant, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission—a manifest error hath happened, to the great damage of the said John Galbraith, as by his complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, the 14th day of October, in the year of our Lord one thousand eight hundred and fifty-seven.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Allowed by ELLIS LEWIS,
Ch. Justice S. Court of Penn'a.

Oct. 21, 1857.

COMMONWEALTH OF PENNSYLVANIA, *ss*.

To the Honorable the Judges of the Supreme Court of the United States of America:

The records and process within mentioned, with all things touch-

ing the same, before the judges within named at the day and place within, contained in a certain record to this writ annexed, we do certify and send as within we are commanded.

February 23, 1858.

WALTER H. LOWRIE,
GEO. W. WOODWARD,
JAMES THOMPSON,
W. STRONG,
WM. A. PORTER,

Chief Justice and Justices of the Supreme Court of Pa.

Filed 24th Feb., 1858.

110.

SUPREME COURT OF THE UNITED STATES.

No. 132.

SALATHIEL T. PAYNE, PLAINTIFF IN ERROR,

vs.

CHARLES E. BUTLER, TRUSTEE OF GEORGIANA L. HECKSCHER, WIFE OF CHARLES A. HECKSCHER.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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GIDEON, print.

Writ of Error.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the honorable the Judge of the Circuit Court of the United States for the eastern district of Pennsylvania, greeting:

Because in the record and proceedings of a plea, which is in the said circuit court before you, between Charles E. Butler, a citizen of the State of New York, trustee, &c., plaintiff, and William Payne, a citizen of Pennsylvania, with notice to George Payne, terre tenant, and Salathiel T. Payne, admitted to defend, &c., defendants No. 6, April sessions, 1857, of said court, and in the proceedings thereupon, a manifest error hath happened, to the great damage of the said Salathiel T. Payne, as by his complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties in this behalf, do command you, if a decree be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next in the said Supreme Court, to be then and their held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Roger B. Taney, Chief Justice of the said Supreme Court, this first day of December, 1857.

[SEAL.]

GEORGE PLITT,
Clerk of the Circuit Court of the United States for the eastern district of Penn'a.

Allowed by—

R. C. GRIER,
Associate Justice Supreme Court United States.

Clerk's Certificate.

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss.

In obedience to the foregoing writ, I herewith transmit to the Supreme Court of the United States a full and complete transcript of the record and proceedings of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a certain suit therein lately depending, wherein Charles E. Butler and others were plaintiffs, and William Payne and others were defendants.

Witness my hand, and the seal of the said court, at Philadelphia, this twenty-ninth day of January, A. D. 1858, and in the [SEAL.] eighty-second year of the independence of the said United States.

GEORGE PLITT,
Clerk Circuit Court.

Citation.

The United States of America to Charles E. Butler, Trustee, &c., greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, wherein Salathiel T. Payne, admitted to defend, &c., is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the decree rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. C. Grier, judge of the circuit court of the United States for the third circuit, this first day of December, A. D. one thousand eight hundred and fifty-seven.

R. C. GRIER,
Ass. Just. S. C. U. S.

Service accepted for pl'ff by

ST. GEO. T. CAMPBELL.

Dec. 5, '57.

Bond of S. T. Payne and J. M. Bickel.

In the Circuit Court of the United States, in and for the eastern district of Pennsylvania, in the third circuit.

CHARLES E. BUTLER, a citizen of the State of New York, trustee of Georgiana L. Heckscher, a citizen of the State of New York, wife of Charles A. Heckscher, a citizen of the State of New York, assignee of Moses Taylor, a citizen of the State of New York,

vs.

WILLIAM PAYNE, a citizen of the State of Pennsylvania, with notice to George Payne, a citizen of the State of Pennsylvania, terre tenant.

April sessions, 1857—No. 6.

Know all men by these presents, that we, Salathiel T. Payne and John M. Bickel, are held and firmly bound unto the above named Charles E. Butler, trustee, &c., in the sum of six thousand

one hundred and ninety-six dollars and sixty-six cents, to be paid to the said Charles E. Butler, trustee, &c., his executors, administrators or assigns, to which payment well and truly to be made we bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, dated this first day of December, A. D. 1857.

Whereas the above named Salathiel T. Payne, admitted to defend as terre tenant in the above case, in respect of his interest therein, and in the premises mentioned in the proceedings therein, has prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment rendered in the above entitled suit, by the above named circuit court:

Now, the condition of this obligation is such, that if the above Salathiel T. Payne shall prosecute his said writ of error with effect, and answer and pay the debt, damages, and costs that shall be recovered if he fails to make good his plea, then this obligation to be void, otherwise to be and remain in full force and virtue.

S. T. PAYNE. [SEAL.]
J. M. BICKEL. [SEAL.]

Signed, sealed and delivered in the presence of us—
GEORGE PLITT,
J. BURCHARD.

Approved:

R. C. GRIER,
Ass. Justice S. C. U. S.

Pleas before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of April session, 1857, No. 6.

It is thus contained:

Writ of Scire Facias.

Be it remembered, that on the thirtieth day of April, A. D. 1857, St. Geo. T. Campbell, esquire, one of the attorneys of said court, prosecutes and sues forth out of the said court the writ of scire facias sur mortgage of the President of the United States, in the words following, to wit:

UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, ss.

The President of the United States to the Marshal of the eastern district of Pennsylvania, greeting:

Seal of the U. S. Circuit Court.

Whereas in and by a certain indenture made the twenty-ninth day of May, in the year of our Lord one thousand eight hundred and forty-four, between William Payne of Branch township, in

Schuylkill county, coal dealer, of the one part, and Moses Taylor, of the city of New York, esquire, of the other part, recorded in the office for recording deeds, &c., for the county of Schuylkill, in mortgage book F, page 259, &c., on the thirty-first day of May, A. D. 1844, reciting, that whereas the said William Payne in and by a certain obligation or writing obligatory, under his hand and seal duly executed, bearing even date therewith, stood bound unto the said Moses Taylor in the sum of five thousand dollars, lawful silver money of the United States of America, conditioned for the payment of two thousand five hundred dollars at or upon the first day of May, 1847, with interest thereon at six per cent. per annum from the first day of May, 1844, to be paid half-yearly on the first days of May and November in each year, at the office of the said Moses Taylor, in the city of New York; the first payment of interest to be made on the first day of November, one thousand eight hundred and forty-four. And the said William Payne, as well for and in consideration of the aforesaid principal debt or sum of two thousand five hundred dollars, and for the better securing the payment thereof with its interest unto the said Moses Taylor and assigns, in discharge of the said recited obligation, as for and in consideration of the further sum of one dollar unto him in hand well and truly paid by the said Moses Taylor, the receipt whereof is thereby acknowledged, did grant, bargain, sell, alien, enfeoff, release, convey, and confirm unto the said Moses Taylor, his heirs and assigns, all that certain messuage, barn and tract or parcel of land situated in Manheim township, in Schuylkill county and State of Pennsylvania, beginning at a stone; thence by land of John Seh, south, eighteen degrees east, fifty-eight perches to a stone; thence by a lot of three acres and one hundred and thirty-eight perches of land recently divided off from the tract now described, the five next following courses and distances: north, eighty-five degrees east, five and a quarter perches to a post; south, fifty-nine degrees east, twenty-one and a half perches; south, eighteen and a half degrees east, seven and a half perches; south, sixty degrees east, fourteen perches; and south, one and a half degrees east, seven perches, to the line of De Forrest's land; thence by the last mentioned land north, seventy-seven degrees east, fifty-four perches to a stone; thence by land now or late of John Pott, north, three degrees west, fifty-six and nine-tenths perches to a stone; north, eighty degrees east, twenty-three and a half perches to a stone; and north, four degrees west, fifty-seven perches to a stone; and thence by land of Jacob Beck, south, seventy-two degrees west, one hundred and thirty-two and a half perches, to the place of beginning; containing sixty-three acres and one hundred and forty-two perchess, or thereabouts, and being the same land, with the exception of the three acres and one hundred and thirty-eight perches above mentioned, which John G. Woolison, then sheriff of Schuylkill county, by

deed dated the twenty-first day of March, one thousand eight hundred and forty-two, and recorded at Orwigsburg, in deed book No. 2, page 593, and made in pursuance of a writ of venditioni exponas issued by the court of common pleas of Schuylkill county, at the suit of George D. Strong, president of the Commercial Bank of the city of New York, against Lebbeus Chapman, returnable to March term of said court, one thousand eight hundred and forty-two, granted as the estate of the said Lebbeus Chapman to Robert Payne, who, with Mary his wife, by an assignment written upon the said sheriff's deed, and recorded at Orwigsburg in deed book No. 20, page 594, conveyed the same to the said William Payne; together with all and singular the buildings and improvements, streets, lanes, alleys, passages, ways, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the reversions and remainders thereof; to have and to hold the same unto the said Moses Taylor and to his heirs and assigns, to his and their only proper use and behoof forever. And in and by the said indenture it was provided always, nevertheless, that if the said William Payne, his heirs, executors, administrators, or assigns, should and did well and truly pay or caused to be paid unto the said Moses Taylor, his executors, administrators, or assigns, the aforesaid debt or sum of two thousand five hundred dollars on the day and time therein being mentioned and appointed for payment thereof, together with the lawful interest thereof, without any fraud or further delay, and without any deduction, defalcation, or abatement to be made of anything for or in respect of any taxes, charges, or assessments whatsoever, then and from thenceforth, as well the said indenture and the estate thereby granted as the said recited obligation should become void and of no effect, anything therein contained to the contrary in anywise notwithstanding.

And whereas, in and by a certain deed-poll, made and dated on the ninth day of May, A. D. 1851, and attested by two subscribing witnesses, the said Moses Taylor, a citizen of the State of New York, granted, bargained, sold, assigned, transferred and set over unto Charles E. Butler, a citizen of the State of New York, trustee of Georgiana L. Heckscher, a citizen of the State of New York, wife of Charles A. Heckscher, a citizen of the State of New York, and to the successors and assigns of the said Charles E. Butler, the aforesaid recited obligation and the said recited indenture of mortgage, and all the moneys, tract of land and premises therein mentioned, and all the right, title and interest therein of him, the said Moses Taylor. And whereas the said sum of two thousand five hundred dollars, with the interest thereof from the first day of November, 1853, as yet remains unpaid, as we have been given to understand; and the said Charles E. Butler, as trustee aforesaid, praying that a fit remedy in this behalf may be provided, we com-

mand you, the said marshal, that by good and lawful means you make known to the said William Payne and George Payne, that they be and appear before the judges of the said court at a session of the same court to be holden at Philadelphia, on the first Monday of June next, to show, if any thing they know or have to say, why the said mortgaged premises with the appurtenances ought not to be taken in execution and sold, to satisfy the debt and interest aforesaid, if to them it shall seem expedient; and have you then there the names of those by whom you shall so make it known to them, and this writ.

Witness the Honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at Philadelphia, this thirtieth day of April, A. D. 1857, and in the eighty-first year of the independence of the United States.

GEORGE PLITT,
Clerk C. C.

Marshal's Return.

On which said first Monday of June, A. D. 1857, being the return day of the said writ, the said marshal makes return thereof, in the words following, to wit:

May 2, 1857. Made known to the defendant, William Payne, on the 2d day of May, 1857, by giving notice of the contents of the within writ to him, and by giving him a true and attested copy of the same; and to the terre tenant, George Payne, by giving him notice of the contents of the within writ and reading the same to him, on the 2d day of May, 1857. So answers

J. S. YOST, *U. S. Marshal.*
Per GEO. WYNKOOP, *Dep. U. S. M.*

Copy of Mortgages, &c.

Afterwards, to wit, on the eighth day of May, in the year aforesaid, a copy of the mortgage and assignment, on which the scire facias was issued, is presented and filed, and is in the words following, to wit:

Circuit Court of the United States.

CHARLES E. BUTLER, a citizen of the State of New York, trustee of Georgiana L. Heckscher, a citizen of the State of New York, wife of Charles A. Heckscher, a citizen of the State of New York, assignee of Moses Taylor, a citizen of the State of New York,	April sessions, 1857. No. 6.
vs.	
WILLIAM PAYNE, a citizen of the State of Pennsylvania, with notice to George Payne, a citizen of the State of Pennsylvania, terre tenant.	

(Sci. fa. sur mortgage dated May 29, 1844; recorded at Orwigsburg, Schuylkill county, on May 31, 1844, in mortgage book F, page 259, &c., and assigned by Moses Taylor to the plaintiff, by deed of assignment dated May 9th, 1851, attested by two subscribing witnesses. Exit May 1; returnable first Monday of June, 1857.)

The following is a copy of the mortgage and assignment upon which the writ of scire facias has been issued in this case:

Mortgage.

This indenture, made the twenty-ninth day of May, in the year of our Lord one thousand eight hundred and forty-four, between William Payne, of Branch township, in Schuylkill county, coal dealer, of the one part, and Moses Taylor, of the city of New York, esquire, of the other part: Whereas the said William Payne, in and by his obligation or writing, obligatory under his hand and seal duly executed, bearing even date herewith, stands bound unto the said Moses Taylor in the sum of five thousand dollars, lawful silver money of the United States of America, conditioned for the payment of two thousand five hundred dollars, at or upon the first day of May, one thousand eight hundred and forty-seven, with interest thereon at six per cent. per annum from the first day of May, one thousand eight hundred and forty-four, to be paid half-yearly, on the first days of May and November in each year, at the office of the said Moses Taylor, in the city of New York, the first payment of interest to be made on the first day of November, one thousand eight hundred and forty-four, without any fraud or further delay, as in and by the said above recited obligation and the condition thereof, relation being thereunto had, may more fully and at large appear.

Now this indenture witnesseth, that the said William Payne, as well for and in consideration of the aforesaid debt or sum of two thousand five hundred dollars, and for the better securing the payment of the same with interest, unto the said Moses Taylor and assigns, in discharge of the said above recited obligation, as for and in consideration of the further sum of one dollar unto him in hand well and truly paid by the said Moses Taylor, at or before the sealing and delivery hereof, the receipt of which one dollar is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, alien, enfeoff, release, convey, and confirm unto the said Moses Taylor, his heirs and assigns, all that certain messuage, barn and tract or parcel of land situate in Manheim township, in Schuylkill county and State of Pennsylvania, beginning at a stone; thence by land of John Seh, south, eighteen degrees east, fifty-eight perches to a stone; thence by a lot of three acres and one hundred and thirty-eight perches of land recently

divided off from the tract now described, the five next following courses and distances: north, eigty-five degrees east, five and a quarter perches to a post; south, fifty-nine degrees east, twenty-one and a half perches; south, eighteen and a half degrees east, seven and a half perches; south, sixty degrees east, fourteen perches; and south, one and a half degrees east, seven perches, to the line of De Forrest's land; thence by the last mentioned land, north, seventy-seven degrees east, fifty-four perches to a stone; thence by land now or late of John Pott, north, three degrees west, fifty-six and nine-tenths perches to a stone; north, eighty degrees east, twenty-three and a half perches to a stone; and north, four degrees west, fifty-seven perches to a stone; and thence by land of Jacob Beck, south, seventy-two degrees west, one hundred and thirty-two and a half perches, to the place of beginning; containing sixty-three acres and one hundred and forty-two perches, or thereabouts, and being the same land (with the exception of the three acres and one hundred and thirty-eight perches above mentioned) which John G. Woolison, then sheriff of Schuylkill county, by deed dated the twenty-first day of March, one thousand eight hundred and forty-two, and recorded at Orwigsburg, in deed book No. 2, page 593, and made in pursuance of a writ of venditioni exponas issued by the court of common pleas of Schuylkill county, at the suit of George D. Strong, president of the Commercial Bank of the city of New York, against Lebbeus Chapman, returnable to March term of said court, one thousand eight hundred and forty-two, granted as the estate of the said Lebbeus Chapman to Robert Payne, who, with Mary, his wife, by an assignment written upon the said sheriff's deed, and recorded at Orwigsburg, in deed book No. 20, page 594, conveyed the same to the said William Payne, together with all and singular the buildings and improvements, streets, lanes, alleys, passages, ways, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging or in anywise appertaining, and the reversions and remainders thereof; to have and to hold the said messuage, barn, tract or parcel of land, hereditaments and premises hereby granted or mentioned so to be, with the appurtenances, unto the said Moses Taylor, and to his heirs and assigns, to the only proper use and behoof of the said Moses Taylor, his heirs and assigns forever: Provided always, nevertheless, that if the said William Payne, his heirs, executors, administrators or assigns, shall and do well and truly pay, or cause to be paid, unto the said Moses Taylor, his executors, administrators or assigns, the aforesaid debt or sum of two thousand five hundred dollars on the day and time hereinbefore mentioned and appointed for payment thereof, together with the legal interest for the same, according to the condition of the said recited obligation, without any fraud or further delay, and without any defalcation, deduction or abate-

ment, to be made of anything for or in respect of any taxes, charges or assessments whatsoever, then and from thenceforth, as well this present indenture and the estate hereby granted as the said recited obligation shall become void and of no effect, anything hereinbefore contained to the contrary thereof in anywise notwithstanding. In witness whereof, the said parties to these presents have interchangeably set their hands and seals hereunto the day and year first above written.

WILLIAM PAYNE. [ss.]

Sealed and delivered in the presence of—
EDW'D H. SILLIMAN,
JACOB REED.

SCHUYLKILL COUNTY, *ss.*

On the twenty-ninth day of May, ano Domini 1844, before me the subscriber, one of the justices of the peace in and for the said county of Schuylkill, personally appeared the above named William Payne, and acknowledged the above indenture of mortgage to be his proper act and deed, and desired the same might be recorded as such. Witness my hand and seal.

JACOB REED. [ss.]

(*Endorsed:*)

Mortgage—William Payne to Moses Taylor—of 63 acres of land in Manheim township, Schuylkill county. Came to hand May 31st, A. D. 1844, at 9 o'clock a. m., to be recorded.

SCHUYLKILL COUNTY, *ss.*

Recorded in the office for recording of deeds, &c., in and for the county of Schuylkill, in mortgage book F, page 259, May the thirty-first, 1844.

Witness my hand and seal of said office at Orwigsburg, the day [SEAL.] and year aforesaid.

JNO. H. DOWNING, *Recorder*.

(*Assignment.*)

This indenture, made the ninth day of May, in the year one thousand eight hundred and fifty-one, between Moses Taylor, of the city and State of New York, merchant, of the first part, and Charles E. Butler, of the said city, trustee of the estate of Georgiana L. Heckscher, wife of Charles A. Heckscher, of the second part.

Whereas William Payne, of Branch township, in Schuylkill county, and State of Pennsylvania, coal dealer, in and by a certain obligation or writing obligatory under his hand and seal, duly executed, bearing date the twenty-ninth day of May, in the year of our Lord one thousand eight hundred and forty-four, became bound to the said Moses Taylor in the sum of five thousand dollars law-

ful money of the United States, conditioned for the payment of two thousand five hundred dollars, lawful money as aforesaid, at or upon the first day of May, one thousand eight hundred and forty-seven, at the office of the said Moses Taylor, in the city of New York, with interest at six per cent. per annum thereon, from the first day of May, one thousand eight hundred and forty-four, to be paid half-yearly at the office of the said Moses Taylor, in the said city: And whereas the said William Payne, for the better securing the payment of the aforesaid debt and interest, in discharge of the said recited obligation, in and by a certain indenture of mortgage, bearing date the twenty-ninth day of May, one thousand eight hundred and forty-four, for the considerations therein mentioned, did grant, bargain, and sell to the said Moses Taylor, his heirs and assigns, a certain messuage, barn and tract or parcel of land situate in Manheim township, in Schuylkill county, and State of Pennsylvania, containing sixty-three acres and one hundred and forty-two perches, or thereabouts, together with its appurtenances; to have and to hold to him, the said Moses Taylor, his heirs and assigns forever, with this proviso, that the same indenture, and the estate and estates thereby granted, and the above recited obligation, should become void on the payment of the mortgage, moneys and interest aforesaid, as in and by the said recited indenture of mortgage recorded at Orwigsburg, in Schuylkill county aforesaid, in mortgage book F, page 259, more at large appears: Now, therefore, this indenture witnesseth, that the said party of the first part, for and in consideration of the sum of twenty-five hundred dollars, lawful money of the United States of America, to him in hand paid by the said party of the second part, at or before the enscaling and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, assigned, transferred, and set over, and by these presents doth grant, bargain, sell, assign, transfer and set over unto the said party of the second part, his successors and assigns, the aforesaid recited obligation, and the said recited indenture of mortgage, and all and every the sum and sums of money which on the day of the date hereof are due and payable thereupon, and which shall and may hereafter accrue and grow due and payable thereupon, and also the above mentioned and described tract of land and premises, with the appurtenances and mortgages as aforesaid, and all the estate, right, title, interest, and demand of, in, and to the said recited obligation, indenture, lands, and moneys hereby assigned, which he, the said party of the first part, now has, or ought to have or claim; to have, hold, receive, take, and enjoy the said obligation, indenture of mortgage, and the said lands thereby granted, and all the moneys hereby assigned, unto the said party of the second part, his successors and assigns, to his and their only use and behoof forever: subject, nevertheless, to the right and equity of redemption of the said William

Payne, his heirs and assigns, in the same. In witness whereof the said party of the first part has hereto set his hand and seal the day and year first above written.

MOSES TAYLOR. [s.s.]

In presence of—
AND. H. GREEN,
THOS. S. SOMERS.

STATE OF NEW YORK,
City and County of New York, ss.

I, Andrew H. Green, residing in the city of New York, a commissioner in said State to take depositions, affidavits, acknowledgments of deeds, powers of attorney, &c., &c., to be used or recorded in the State of Pennsylvania, duly commissioned and qualified, do hereby certify and make known, that on the ninth day of May, in the year of our Lord one thousand eight hundred and fifty-one, before me came Moses Taylor, the signer and sealer of the foregoing instrument, to me personally known, and the said Moses Taylor then acknowledged in due form of law the said instrument to be his act and deed, and desired that the same might be recorded as such. In testimony whereof I have hereunto subscribed my name and affixed my seal of office, this ninth day of May, in the year of our Lord one thousand eight hundred and fifty-one.

AND. H. GREEN, [s.s.]
Commissioner of Deeds in New York for the State of Pennsylvania.

ST. GEO. T. CAMPBELL,
By JOSEPH M. PILE, *for Plff's.*

May 7, 1857.

Affidavit of Defence, by William Payne.—Filed 26 June, 1857.

CHARLES E. BUTLER et al.
vs.
WILLIAM PAYNE, with notice to GEORGE PAYNE, terre tenant.
} C. C.—April sess., 1857, No. 6.—Sci. fa. sur mortgage.

William Payne, the above named defendant, being sworn, according to law, doth depose and say, that he has a full defence to the above suit, as follows: That the mortgage upon which the above sci. fa. issued has long since been paid, and that there is nothing due by deponent, or any other person, on said mortgage; that, about the beginning of May, 1849, (the more particular and exact time deponent is not now able to give,) deponent delivered to Richard Heckscher, the regularly constituted and authorized agent of plaintiff, his, deponent's, draft upon George Payne for $2,600, and by him (Richard Heckscher) accepted, in full satisfaction of said mortgage, debt and interest, and which draft was by the said

Heckscher received and the money due upon the same collected and received by him as said agent; that said draft was delivered to said agent in satisfaction of the mortgage, and for no other purpose whatever, and so the said Heckscher was advised and instructed; and this deponent at that time was in no way indebted to the said Heckscher, or to his principal, other than upon said mortgage.

WM. PAYNE.

Sworn and subscribed before me this twenty-sixth day of June, A. D. 1857.

J. BURCHARD,
U. S. Commissioner.

Affidavit of S. T. Payne.—Filed 10 July, 1857.

In the Circuit Court of the United States.—April Sess., 1857.

CHARLES E. BUTLER
vs.
WILLIAM PAYNE, with notice to GEORGE PAYNE, terre tenant. } No. 6.

Salathiel T. Payne, of Schuylkill county, in the State of Pennsylvania, being duly sworn, says, that the said George Payne, who is the father of this deponent, is not now the terre tenant of said premises described in the writ in this case, which were some weeks ago sold by the sheriff of Schuylkill county, under a judgment against the said George Payne, and have since been conveyed by the said sheriff to Francis W. Hughes, esquire, he being the highest and best bidder therefor. This deponent, however, by the virtue of a small payment to, and an agreement to that effect made with, said Hughes, since said sheriff's sale to him, has an equitable interest or estate in said premises, which he prays that he may be allowed to protect by intervening in this case and making defence.

This deponent is advised, and verily believes, that he will be able to prove, upon a trial of this cause, that said sheriff's sale to the said Francis W. Hughes discharged the mortgage sued on in this case, if at the time of said sale it was a valid and subsisting mortgage, which this deponent does not admit, and which he is informed is denied on oath by an affidavit filed herein; that at the time of said sale there was, as he is advised and informed, a certain charge or lien upon said premises prior to said mortgage, created by or resulting from a former judicial sale of said premises under an order of the orphans' court of Schuylkill county, as the estate of one Peter Lehr, who had died seized thereof, to secure the interest under the intestate act of Pennsylvania of the widow of the said Peter Lehr during her life, and, after her death, to secure the remainder or reversion of such interest to those entitled after her; that this deponent himself paid to said widow, on the 11th of

April last, the sum of twenty-one dollars due her as the interest for the principal sum so secured for the year ending on the first of last April, which he paid for his father, the said George Payne; and that this deponent is instructed by his counsel, and advised and informed, and expects to be able to show, on the said trial of this cause, that, by the law of Pennsylvania, said sheriff's sale discharged the said charge or lien, to secure the said widow and others, and by consequence discharged also the mortgage sued on in this case, leaving said plaintiff to look to the proceeds of said sheriff's sale for his debt, and not to said premises.

S. T. PAYNE.

Sworn and subscribed before me this third day of July, A. D. 1857.

J. BURCHARD,
U. S. Com'r.

And the said Salathiel T. Payne, who is permitted to defend, &c., by his attorney, E. Spencer Miller, comes and defends the force and injury, &c., and pleads payment, with leave, &c.

And for a further plea in this behalf, by leave, &c., he says that the premises described in the said writ of scire facias were, after the date of the said mortgage in said writ mentioned, levied upon as the property of one George Payne, who then was seized thereof, under and by virtue of a certain writ of fieri facias, issued out of the court of common pleas of Schuylkill county to December term of said court, 1856, No. 538, in a suit wherein John M. Rosebury was plaintiff and said George Payne was defendant, and under and by virtue of an alias writ of venditioni exponas, issued out of the same court on the same judgment, to June term, 1857, No. 295, sold by the said sheriff of Schuylkill county, and by deed poll duly executed, acknowledged, and recorded, conveyed to one Francis W. Hughes; that, at the time of said levy and sale, there was upon said premises, of a date prior to said mortgage, a certain lien, charge, or incumbrance, under a proceeding in the orphans' court of said county, in the matter of the estate of one Peter Lehr, deceased, who had died seized of said premises, to secure to the widow of said Lehr her interest in and of one-third part of his estate; that by said sheriff's sale said premises were released and discharged in the hands of the said Francis W. Hughes from the lien of said mortgage in the writ in this case described; and that he, the said Salathiel T. Payne, has an equitable estate in said premises, under and by agreement with the said Francis W. Hughes, who has the legal title as aforesaid; and this he is ready to verify, &c.; wherefore he prays, &c.

And thereupon the said plaintiff, by his attorney aforesaid, saith, as to the second plea of the said Salathiel T. Payne, the plaintiff says that he ought not to be barred, &c. &c., because he says that,

by the order and under the proceedings in the orphans' court mentioned in the said plea, the premises in said mortgage mentioned were sold as the property of the said Peter Lehr, for a certain price, viz: $1,050, by Jacob Raercher, as the administrator of the said Peter Lehr, deceased, and has, viz: on the twenty-ninth day of March, 1833, duly conveyed to one Philip Morchel, who at the same time, viz: on the day and year last aforesaid, made and delivered to the said Jacob Raercher, as administrator aforesaid, a mortgage of said premises to secure the payment of $350, part of the said purchase money, immediately after the decease of Susanah Lehr, the said widow of the said decedent, together also with the lawful interest therefor annually, viz: on the first day of April in ever year during the natural life of the said Susanna; which said mortgage was afterwards, viz: on the day and year last aforesaid, duly recorded in the office for recording deeds in Schuylkill county, in the State of Pennsylvania, and is the same charge, lien and incumbrance mentioned in the said plea; and the said Susanna accepted the said mortgage as the security for her interest in or of one third part of the estate of her husband, deceased, and the said mortgage then and thence, till and at the time of the said sale to said Francis W. Hughes, was prior to all other incumbrance on said premises. And the plaintiff further avers that, immediately before and at the time said sale to said Hughes, public notice of the said mortgage, and that the same was then a lien on said premises, and that they would then be sold subject thereto, was then and there given to the persons assembled to bid therefor, and of all which due notice was then had by the said Hughes, who then, viz: at the time of the said sale, bid for and gave for the said premises a price not greater than the value thereof, under and subject to the said mortgage; and this the said plaintiff is ready to verify; wherefore, &c. &c.

And the said Salathiel T. Payne, by his attorney aforesaid, saith, that the replication of the said plaintiff to his the said Salathiel T. Payne's second plea, and the matters therein contained in manner and form as the same are above pleaded and set forth, are not sufficient in law for the said plaintiff to have or maintain his said action, and that he the said Salathiel T. Payne is not bound by law to answer the same, and this he is ready to verify; wherefore, by reason of the insufficiency of said replication in this behalf, the said defendant prays judgment of the said plaintiff, ought to have or maintain his aforesaid action thereto against him, &c.

Afterwards, to wit, on the twenty-third day of November, 1857, to enable the question of law raised by the pleadings to be decided by the court, the plaintiff amends his replication by withdrawing therefrom the following:

"And the said Susanna accepted the said mortgage as the security for her interest in and of one-third part of the estate of her husband, deceased."

And the said William Payne, by his attorney, Lewis C. Cassi-

day, comes and defends the force and injury, &c., and pleads "non est factum," payment covenant performed with leave, &c.

And the said plaintiff, by his attorney aforesaid, to the said plea of payment replies non solvit, and to the plea of non est factum and covenants performed, &c. he replies, "similitur."

Therefore let a jury thereupon come before the judges aforesaid, at Philadelphia aforesaid, on the fifth day of October next, by whom, &c., and who neither, &c., to recognise, &c., because as well, &c., the same day is then and there given to the parties aforesaid.

On which said fifth day of October, A. D. 1857, come the parties aforesaid, by their attorneys aforesaid, and the jurors of the jury aforesaid being called, likewise come.

Afterwards, to wit, at the same term, to wit, on the fourteenth day of October, A. D. 1857, the jurors aforesaid being called, come, to wit: Samuel Greble, Charles Brown, George Kern, Alfred Stemmell, Theodore Alexander, Jacob Dietz, Napoleon B. Harris, Andrew McGrath, John Rice, William Moran, George Carpenter, and Joseph Beever, who are duly empanelled, chosen, tried, and sworn, or affirmed, to speak the truth of the matter within contained, and upon their oaths and affirmations do say that they find for the plaintiff, and assess the damages at $3,093 33, and $\frac{6}{100}$ costs.

Afterwards, to wit, on the twenty-sixth day of October, A. D. 1857, it is ordered, adjudged and decreed, by the court, that the said demurrer be overruled.

Whereupon, afterwards, to wit, on the twenty-third day of November, A. D. 1857, it is considered, ordered and adjudged, by this court here, that the demurrer interposed by the said Salathiel T. Payne be overruled, and that the said plaintiff do recover against the said defendants, William Payne and George Payne, terre tenant, as well the sum of $3,093 33, with interest from the 14th of October, 1857, as also the smm of $ for his costs and charges about his suit in that behalf expended, to the said plaintiff by the court here adjudged, to be levied out of the lands and tenements in the said writ of scire facias mentioned.

Filed 16th February, 1858.